

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

Douglas P. LaBorde, <i>et al.</i> ,	:	
	:	CASE NO. 2:12-cv-00697
Plaintiffs,	:	
	:	JUDGE FROST
v.	:	
	:	MAGISTRATE JUDGE KEMP
The City of Gahanna, <i>et al.</i> ,	:	
	:	CLASS ACTION
Defendants.	:	

**PLAINTIFFS' OBJECTIONS TO THE INCLUSION OF THE AFFIDAVIT OF
JENNIFER TEAL ATTACHED TO DEFENDANTS CITY OF GAHANNA AND
GAHANNA FINANCE DIRECTOR JENNIFER TEAL'S MOTION TO DISMISS
PLAINTIFFS' FIFTH AMENDMENT CLAIM**

Plaintiffs Douglas and Carla LaBorde (the "LaBordes") object to the inclusion of the Affidavit of Jennifer Teal, attached as Exhibit A to Defendants City of Gahanna and Gahanna Finance Director Jennifer Teal's Motion to Dismiss¹ Plaintiffs' Fifth Amendment Claim (doc. 14-1) (the "Affidavit"). Because the Affidavit is outside the scope of inquiry permitted under Civil Rule 12(c), it should be disregarded and excluded by this Court. The basis for this motion is developed further in the attached memorandum in support.

¹ Although captioned as a motion to dismiss, the City of Gahanna and Gahanna Finance Director Jennifer Teal have filed an Answer in this matter (doc. 5), thus the motion should be for judgment on the pleadings under Federal Rule of Civil Procedure 12(c).

Respectfully submitted,

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MEMORANDUM IN SUPPORT

In an attempt to provide further support for their arguments, Defendants City of Gahanna and Gahanna Finance Director Jennifer Teal (the “Moving Defendants”) attached the Affidavit to their Motion to Dismiss. This extrinsic evidence is not permitted under Federal Rule 12(d), which states that:

If, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56. All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion.

Fed. R. Civ. P. 12(d).

The LaBordes object to the Affidavit’s inclusion as being inappropriate under Federal Rule 12(d), thus it should be disregarded by this Court in its decision with respect to the Motion

to Dismiss.² For these reasons, this Court should exclude the Affidavit from its consideration of the Motion to Dismiss.

Respectfully submitted,

/s/ TODD H. NEUMAN

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² Although the Gahanna City Code may be properly before the Court based upon judicial notice, other statements contained within the Affidavit are summarily inappropriate. *See, e.g.*, Affidavit ¶ 5 (“It is not the exclusive method of reporting wage and/or schedule income.”)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing *Plaintiffs' Objections To The Inclusion Of The Affidavit Of Jennifer Teal Attached To Defendants City Of Gahanna And Gahanna Finance Director Jennifer Teal's Motion To Dismiss Plaintiffs' Fifth Amendment Claim* has been served via the Court's CM/ECF systems, this 21st day of December, 2012, upon:

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